

(2014) 11 MAD CK 0479

Madras High Court (Madurai Bench)

Case No: C.R.P. (MD) No. 722 of 2014 and M.P. (MD). No. 1 of 2014

Kulanthaivelu Thevar

APPELLANT

Vs

Veerapthiran

RESPONDENT

Date of Decision: Nov. 25, 2014

Hon'ble Judges: M. Duraiswamy, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

M. Duraiswamy, J.

Challenging the fair and final order passed in I.A. No.161 of 2012 in O.S. No.19 of 2010 on the file of District Munsif Court, Muthukulathur, the plaintiffs have filed the above civil revision petition.

2. The Plaintiffs filed the suit in O.S. No.19 of 2010 for permanent injunction. In the said suit, the plaintiffs filed an application in I.A. No.161 of 2012 seeking for appointment of an Advocate Commissioner to note down the physical features. The said application was opposed by the defendant. The Trial Court took into consideration the case of both parties and while dismissing the application found that there is no dispute with regard to the boundaries mentioned in the suit property.

3. That apart, on a perusal of the written statement, it could be seen that in para 3 of the written statement the defendant has stated that the property mentioned in the sale deed dated 28.08.1959 is noting to do with the suit property. As to whether the property mentioned in the said sale deed and the suit property are one and the same is concerned, the plaintiff has to establish the same by oral and documentary evidences. The plaintiff cannot collect evidence through Advocate Commissioner.

4. Further in a suit for bare injunction, the only question that has to be decided is with regard to the possession of property. Since the present application has been filed by the plaintiffs to note down the physical features, the Trial Court has rightly

dismissed the application holding that there is no dispute with regard to the boundaries mentioned in the suit property. It is needless to state that the plaintiffs have to establish their case by acceptable oral and documentary evidences.

5. In these circumstances, I do not find any error or irregularity in the order passed by the Trial Court. The civil revision petition is devoid of merits and the same is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.